

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:07-CR-57-01-F

UNITED STATES OF AMERICA,	)	
	)	
v.	)	<u>O R D E R</u>
	)	
WAYNE DOUGLAS WILSON,	)	
Defendant.	)	

On July 16, 2007, Wayne Douglas Wilson (“Wilson”), through counsel, filed a document entitled, “Motion for Reduction of Sentence” [DE-60], seeking an order reducing his 96-month sentence to a term of 78 months. Wilson contends this reduction is authorized by the Fourth Circuit Court of Appeals’ ruling in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011). On May 31, 2012, the Government filed a motion entitled, “Motion to Re-characterize” [DE-63], requesting an order re-characterizing Wilson’s motion as his first motion to vacate, set aside or correct his conviction or sentence, pursuant to 28 U.S.C. § 2255. Wilson has not filed a response to the Government’s motion.

Accordingly, for good cause shown and without objection by Wilson or his attorney, and pursuant to *Castro v. United States*, 540 U.S. 375, 383 (2003), the court affords Wilson the following:

**CASTRO NOTICE & OPPORTUNITY TO WITHDRAW OR AMEND**

**Mr. Wilson**, notwithstanding the title you have given your May 3, 2012, Motion to Reduce Sentence [DE-60], the court perceives that you are seeking relief from

the fact or duration of your confinement, which relief may be had, if at all, pursuant to a motion filed under 28 U.S.C. § 2255. The court, therefore, intends to re-characterize your letter as a motion filed pursuant to § 2255. This re-characterization means that any subsequent § 2255 motion you file will be subject to the restrictions on “second or successive” motions set forth in that statute.<sup>1</sup> You therefore may **withdraw** your May 3, 2012, motion, or **amend** it so that it contains all the § 2255 claims you believe you have.

**Mr. Wilson**, you are DIRECTED to file with this court a *written notice* of your decision whether or not to withdraw or amend your May 3, 2012, motion. Specifically, on or before **July 23, 2012**:

**A.** If you decide *not* to withdraw this motion, you must complete and return for filing, the enclosed form which is required in the Eastern District of North Carolina for § 2255 motions, stating all the § 2255 claims for relief you wish to raise. Please note that the form requires that you explain why you contend that this motion is timely under the one-year statute of limitations applicable to § 2255 motions; **OR**

**B.** If you decide to *withdraw* your motion, you shall simply file a Notice of Withdrawal of Motion to Reduce Sentence.

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<sup>1</sup> Specifically, a second or successive § 2255 motion must be certified by a panel of the Fourth Circuit Court of Appeals pursuant to 28 U.S.C. § 2244, to contain “(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [you] guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.”

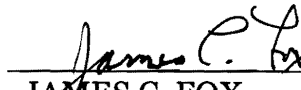
You are DIRECTED to mail your response to this order to:

Clerk of Court, EDNC  
Prisoner Division  
Sanford Federal Building  
310 New Bern Avenue, Room 574  
Raleigh, NC 27601

**YOU FURTHER ARE ADVISED THAT YOUR FAILURE TO  
RESPOND TO THIS ORDER IN A TIMELY MANNER AS DIRECTED HEREIN  
WILL RESULT IN THE COURT'S RE-CHARACTERIZATION OF YOUR MAY  
3, 2012, MOTION [DE-60] AS HAVING BEEN FILED PURSUANT TO 28  
U.S.C. § 2255, and it will be adjudicated accordingly.**

SO ORDERED.

This, the 22nd day of June, 2012.

  
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JAMES C. FOX  
Senior United States District Judge